



October 1, 2020

Hon. Brian M Cogan  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

By Electronic Filing.

**Re: Request for Clarification on Order to Show Cause in  
Harley et al. v. Kosinski et al., 20-cv-4664-BMC**

Dear Judge Cogan:

My firm represents the Plaintiffs in the matter named above. The Court just asked Plaintiffs to show cause as to “why their claims should not be broken into separate actions.” I called Chambers to briefly ask (given the schedule) how best to seek clarification of the Court’s direction and was told I should file this letter.

If the Court’s suggestion is that the case would be better handled with separate captions, but consolidated for at least the upcoming motion,<sup>1</sup> ultimately Plaintiffs have no view on that question – and all involved may save time on creating and reading briefing. In short, Plaintiffs have no objection if the Court enters an Order severing the action as to the seven sets of State *Ex Parte Young* Defendants (and respective Plaintiffs) and simultaneously consolidates those seven cases for pre-trial proceedings. If, on the other hand, the Court is suggesting these cases should be litigated separately, we are happy to provide a more detailed explanation of why consolidated proceedings would be proper and more efficient.

If it is helpful, we can propose a form of Order or appear for a brief on the record conference to clarify, at the Court’s convenience. We thank the Court for its time and consideration.

Respectfully submitted,

/s/

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*Honorific/Pronouns: Mx., they/their/ them*  
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<sup>1</sup> The only questions at stake here are pure First Amendment and Equal Protection questions. Plaintiffs do not contend that any State is incorrect in its interpretation of its own law – only that the First Amendment makes those laws (that all produce the same result) are unconstitutional as applied.